

The Honorable Ricardo S. Martinez
Hearing Date: March 25, 2005

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH FLEMING and JOHN DOE,

Plaintiffs,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole, a/d/a "MORMON CHURCH"; LDS
SOCIAL SERVICES a/d/a LDA FAMILY
SERVICES, a Utah corporation,

Defendants.

NO. C04-2338RSM

PLAINTIFFS' MOTION TO AMEND
COMPLAINT

I. RELIEF REQUESTED

Plaintiffs respectfully request that this Court enter an order allowing plaintiffs to amend the complaint to add two additional plaintiffs.

PLAINTIFFS' MOTION TO AMEND COMPLAINT - 1 of 3
(C04-2338RSM)
[138231 v05.doc]

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II. STATEMENT OF FACTS

Plaintiffs Kenneth Fleming and John Doe filed this action in King County Superior Court on October 25, 2004. *Complaint, attached as Exhibit A to Declaration of Michael T. Pfau in Support of Plaintiffs' Motion to Amend Complaint ("Pfau Decl.")*. Defendants removed this matter to federal court on November 18, 2004. Plaintiffs have alleged that they were repeatedly sexually molested by Jack Loholt, a Mormon priest, church elder and scout leader. *Complaint*. Plaintiffs have further alleged that the defendants had knowledge of the danger posed by Jack Loholt, but stood idly by while more children were molested. *Complaint*. Two additional victims of the sexual molestation of Jack Loholt now wish to join as plaintiffs in this lawsuit. The claims of these additional victims are outlined in the proposed version of the Amended Complaint. *Exhibit B to Pfau Decl.*

III. ISSUE PRESENTED

Whether plaintiffs should be allowed to amend the complaint to add two additional plaintiffs who also suffered sexual abuse by Jack Loholt.

IV. EVIDENCE RELIED UPON

This Motion is based upon the Declaration of Michael T. Pfau and exhibits thereto and the records and files herein.

V. LEGAL AUTHORITY AND ANALYSIS

FRCP 15(a) provides that once the defendant has answered the complaint, the plaintiff must move for leave of court to amend the complaint. Leave to amend the complaint "shall be freely given when justice so requires." FRCP 15(a)

1 Three additional victims of the sexual abuse of Jack Loholt have recently come
2 forward with their claims and wish to join in the current lawsuit. These victims suffered
3 sexual abuse during the same time period as the plaintiffs. Justice requires that the plaintiffs
4 be allowed to join in this matter.

5
6 **VI. CONCLUSION**

7 For all of the reasons discussed above, plaintiffs respectfully request that this Court
8 grants Plaintiffs' Motion to Amend the Complaint in order to join two additional plaintiffs, as
9 outlined in the proposed version of the Amended Complaint.

10 Dated this 14 day of March, 2005.

11 GORDON, THOMAS, HONEYWELL, MALANCA,
12 PETERSON & DAHEIM LLP

13 By 

14 Michael T. Pfau, WSBA No. 24649
15 mpfau@gth-law.com
16 Attorneys for Plaintiffs

17 LAW OFFICES OF TIMOTHY D. KOSNOFF

18 By _____

19 Timothy D. Kosnoff, WSBA No. 16586
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ORDER GRANTING PLAINTIFFS'
MOTION TO AMEND COMPLAINT

This matter having come on regularly before the undersigned Judge of the above entitled court upon the Motion of the plaintiffs to Amend the Complaint, and the court having heard the argument of counsel and being otherwise fully apprised in the premises, the court having reviewed the documents filed in support of and in opposition to the motion:

ORDER GRANTING CERTIFICATE OF SERVICE - 1 of 2
(C04-2338RSM)
[138534 v01.doc]

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1 NOW, therefore, it is hereby ORDERED that Plaintiffs' Motion to Amend the
2 Complaint is GRANTED.

3 DONE IN OPEN COURT this _____ day of _____, 2005.
4
5
6

7 THE HONORABLE RICARDO S. MARTINEZ

8 Presented by:

9 GORDON, THOMAS, HONEYWELL, MALANCA,
10 PETERSON & DAHEIM, LLP

11 By: Steve Reid #24708 for
12 Michael Pfau, WSBA No. 24649
13 Of Attorneys for Plaintiffs

14 LAW OFFICE OF TIMOTHY D. KOSNOFF

15 By: Steve Reid #24708 for
16 Tim Kosnoff, WSBA No. 16586
17 Of Attorneys for Plaintiffs

18 Approved as to form; notice of presentation waived:

19 STAFFORD FREY COOPER

20
21 By: _____
22 Thomas D. Frey, WSBA No. 1908
23 Marcus Nash, WSBA No. 14471
24 Attorneys for Defendants
25
26

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CERTIFICATE OF SERVICE

I, TANYA GARBELL, certify and declare under oath as follows:

1. I am over the age of eighteen and make the following statements based upon
my personal knowledge and experience.

2. I am currently employed by Gordon, Thomas, Honeywell, Malanca, Peterson
& Daheim LLP.

CERTIFICATE OF SERVICE - 1 of 2
(C04-2338RSM)
[138508 v02.doc]

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Thomas D. Frey Stafford Frey Cooper 601 Union Street, Suite 3100 Seattle, WA 98101-1374	Marcus Nash Stafford Frey Cooper 601 Union Street, Suite 3100 Seattle, WA 98101-1374
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Signed and dated this 15th day of March, 2005, in Seattle, Washington.


TANYA GARBELL